

MINUTES
FUEL TAX TASK FORCE
of the
IDAHO COUNCIL ON INDIAN AFFAIRS
APRIL 26, 2006
THE COEUR D'ALENE RESORT, CASCO BAY ROOM
COEUR D'ALENE, IDAHO

(Approved by the Council)

Participants were Lt. Governor James Risch, Senator Michael Jorgenson, Representative George Sayler, Coeur d'Alene Tribal Council Chairman Chief Allan, Fort Hall Business Council Vice-Chairperson Nancy Eschief Murillo, Nez Perce Executive Committee Vice-Chairman Samuel Penney, and Russell Westerberg, representing the Kootenai Tribe. Paige Alan Parker of the Legislative Service Office was present as the recording secretary.

In attendance were Representative Jim Clark, representing District 3; Representative Bob Nonini, representing District 5; Commissioner "Gus" Johnson, representing Kootenai County; Quanah Spencer, Eric Van Orden, Margaret A. SiJohn and Bill Roden, representing the Coeur d'Alene Tribe; Gary Gould, Delbert Farmer and Bill Bacon, representing the Shoshone-Bannock Tribes; Darren Williams, Yvonne Oberly and Gene Picard, representing the Nez Perce Tribe; John Sandy and Jeff Storti, assisting Lt. Governor Risch; Ted Spangler, representing the Idaho Tax Commission; Mark Grannis, representing the Idaho Petroleum Marketers Association; Jerry Jaeger, representing Hagadone Hospitality Co.; Justin Post, representing the St Maries Gazette; Jonel Aleccia, representing the Spokesman Review; E.W. Johnson, representing Northwest News Network (Public Radio); Tom Greene, representing the Coeur d'Alene Press; and Barbara Strichfaden, a visitor.

Ft. Hall Business Council Vice-Chairperson Nancy Eschief Murillo gave the invocation.

Representative Sayler welcomed all to the meeting and stated that only the participants would participate in the Task Force discussion and that members of the Northwest Band of the Shoshone Nation were welcome to attend the meeting but would not be permitted to participate since the Northwest Band was not a recognized Idaho Indian Tribe. Representative Sayler provided a brief history of the creation of the Task Force, thanked Lt. Governor Risch for attending and asked Kootenai County Commissioner Gus Johnson to address the Task Force.

Commissioner Johnson noted that in the years that he has been a Kootenai County commissioner the relationship between the county and the Coeur d'Alene Tribe has undergone a 180 degree change for the better. He commented that the Coeur d'Alene Tribe wants to be at the table as a partner and cited as an example the tribe's efforts in the area of public transportation. Commissioner Johnson stated that he especially appreciates the efforts of Chief Allan, the Coeur d'Alene Tribal Council Chair, for his cooperation and interaction. With regard to county road maintenance, Commissioner Johnson stated that he was not directly involved in that area

but that he was aware that the Coeur d'Alene Tribe has a good working relationship with the Worley Highway District.

Representative Sayler then asked Lt. Governor Risch to outline the state's position on taxation of motor vehicle fuels sold on the Idaho Indian reservations.

Lt. Governor Risch began by noting that he has the authority under the Idaho Tribal Relations Act to negotiate an agreement with the Indian Tribes on fuel tax issues, subject to concurrent resolution approval by the Legislature. The Legislature would also be involved in the passage of any implementation legislation. Although he would prefer negotiating a master agreement with all the tribes, Lt. Governor Risch stated that he understood that the different tribes have different needs. Lt. Governor Risch stressed that the recent United States Supreme Court decision in the *Potawatomi Nation* case, followed by the defeat of HB 661 in the last legislative session, provided a unique window of opportunity to negotiate a fuel tax agreement. Failure to do so posed risks for both sides and would certainly result in the passage of HB 661-type legislation in the future, followed by an expensive legal battle. Lt. Governor Risch reminded everyone that the parties control the outcome of a negotiation while a court mandated decision would result in an all-or-nothing outcome.

Lt. Governor Risch then outlined the key issues that need to be addressed in a negotiated agreement:

Parity. The same rate of fuel taxation, currently set at \$.25/gal. must be charged on all fuels sold in Idaho. However, the price charged at the pump could vary based on competition and market forces.

Collection. The fuels tax needs to be charged at the wholesale level. Having the tax collected at the wholesale level is the most efficient mechanism for the state and would save the tribes the administrative cost of collection.

Allocation. The allocation of the \$.25/gal. fuels tax between the state and the tribes is a subject of negotiation.

IFTA. The International Fuel Tax Agreement issues should be part of the negotiated agreement. Failure of the tribes to collect the IFTA tax impacts the state, and trucking organizations are now advising their members not to fill up at reservation stations.

Binding Agreement. Any negotiated agreement between the state and the tribes must be binding on all reservation fuel sellers. Lt. Governor Risch stated that he believes that the tribes have the authority to require that non-tribal owned stations be bound by such an agreement.

Outstanding tax refund claims. Lt. Governor Risch recognized that the Shoshone-Bannock Tribes have a pending claim for tax refunds following the Idaho Supreme Court's decision in the *Goodman Oil* case. He recognized that this issue did not need to be resolved in

the present negotiations but could be addressed as part of the resolution of the IFTA issue.

Lt. Governor Risch stated that he came to the meeting to negotiate in good faith and asked the tribal representative to relate their positions.

Ms. Murillo questioned whether the tax refund issue should be part of the present negotiations. Following a short recess, Bill Bacon, an attorney for the Shoshone-Bannock Tribes, was asked to clarify the tribe's position on the tax refund issue. Mr. Bacon stated that following the Ninth Circuit's decision in the *Hammon* case, all the fuel selling tribes received fuel tax refunds back to 1999. Pinkston, a fuel distributor, has filed a refund case, seeking fuel tax refunds for the 1996 to 1999 period. The Shoshone-Bannock Tribes are seeking to intervene in the *Pinkston* case. Any issues involved in that case cannot be resolved with the participation of Pinkston. Further, the Shoshone-Bannock Tribes have a claim for fuel tax refunds for the pre-1996 period which involves statute of limitation issues. Following this clarification, Lt. Governor Risch commented that he did not want to put the fuel tax refund issue on the table in jeopardy of the other issues.

Mr. Penney stated that he was under the impression that the purpose of the present meeting was to review information and not to conduct formal negotiations. With regard to the parity issue, Mr. Penney stated that the Nez Perce Tribe is currently charging a \$.25/gal. tax. He did not feel that he could respond to the collection and the allocation issues at this time without discussing these matters with the Tribal Executive Council. As to IFTA, the Nez Perce do not get many interstate truckers through their stations. As for the master settlement idea, Mr. Penney noted that usually the agreements are individual to the tribes which have different issues.

Co-chairman Allan thanked the Lt. Governor for coming to the meeting. He questioned, however, why the fuel tax issue was such a concern to the state since only \$3.5 million in tax revenue was at issue. Chief Allan state that the Coeur d'Alene Tribe is always true to its word. Even prior to the tribal gaming compact, the Coeur d'Alene Tribe was donating five percent of the gaming revenues to the schools. The tribe is already charging a \$.25/gal. fuel tax, so there is already tax parity. Mr. Allan does not feel that price parity is an issue since he personally fills up his tank at the Costco station in town, where the price of gas is cheaper than on the reservation. As for collection, Mr. Allan does not understand why the state should be the entity to collect and distribute the fuel tax proceeds. The Coeur d'Alene Tribe would rather collect the fuel tax itself and allow the state to look at its books. Mr. Allan also questioned any 50-50 allocation split with the state on fuel tax proceeds. He is not in favor of a master settlement agreement, since one size does not fit all. The IFTA issue really involves the Shoshone-Bannock Tribes. He is aware of the *Potawatomi Nation* case, but is not afraid of it. However, he recognized that neither side wins by going to court, and that it would cost more than \$3.5 million to litigate the matter. He is optimistic that an agreement can be negotiated.

Ms. Murillo stated that the Shoshone-Bannock Tribes have only two gas stations on the reservation and have over 2,000 miles of road. Two interstate highways run through the

reservation. The tribes charge \$.01/gal. on diesel and \$.15/gal. on gas, both of which are collected by the wholesaler. The reservation residents spend money in town and pay sales tax. The gas tax money helps the tribes handle their own needs. The amount of money involved is not a lot. The Shoshone-Bannock Tribes are not in favor of a master settlement. Ms. Murillo also reminded that any agreement with the state would have to be approved by the Ft. Hall Business Council. She would like to hear more regarding the state's position on the IFTA issue. In response to a question by Lt. Governor Risch, Mr. Farmer, Revenue Director for the Fort Hall Business Council, stated that the tribes used to charge a \$.25/gal. tax on both gas and diesel, but subsequently lowered the tax rates. Ms. Murillo expressed appreciation for the participation of the Lt. Governor at the meeting and stated that she would present his issues to the Ft. Hall Business Council at its next meeting. She agreed that these issues will not go away and that litigation is not the best route.

Mr. Penney commented that the Task Force participants should not be discouraged that more was not being accomplished at the meeting. This was the first opportunity he has had to hear the state's six points. He will take this information back to the Tribal Executive Council for discussion. That Council is willing to work with the state in resolving these issues. Parity would not be an issue for the Nez Perce Tribe, but collection and allocation are issues. Future meetings may be necessary to deal with these issues. Mr. Picard noted that interstate trucks only fuel at the Nez Perce reservation's stations once a month. The Nez Perce Tribe may expand its diesel operations in the future but, at the present, IFTA is not really an issue. Mr. Penney encouraged the participants to continue to work toward resolving these issues and not give up after only having one meeting.

Lt. Governor Risch stated that he would be willing to negotiate separate agreements with the individual tribes. He stated that fuel tax revenues should be spent on roads. He reminded that once an agreement on how to split the \$.25/gal. tax is reached, collection is easy if the distributor collects the tax, remits the proceeds to the state, and the state then sends the tribes a check according to the agreed upon split. Lt. Governor Risch recognizes that only three of the five Idaho Indian Tribes have fuel outlets on their reservations and encouraged the two tribes that do not currently have a reservation fuel outlet to decide what situation they might be in.

Mr. Westerberg, on behalf to the Kootenai Tribe, stated that the tribe would meet and negotiate on the fuel tax issues, but that a master agreement may not work.

Following a recess, Lt. Governor Risch stated that he appreciated Mr. Penney's comments that the Tribal Council needed more time to review the issues. Lt. Governor Risch encouraged the Task Force to meet again and stated that he would send a representative with real authority to negotiate. He pointed out, however, that the window of opportunity to reach an agreement may close in the future, if progress is not made.

Senator Jorgenson and Representative Sayler commented that the accomplishments achieved at this meeting would not have been possible without Lt. Governor Risch's presence and that he has helped the Task Force take its next step.

The participants agreed to hold the next meeting of the Task Force on Wednesday, June 6, 2006, at the Coeur d'Alene Tribe's hotel and casino near Worley, Idaho, beginning at 9:00 a.m. On the agenda will be the reports by the individual tribes on their discussions with the Governor's office. Mr. Penney also requested that the SAFETEA-LU (State Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users) legislation with regard to federal expenditures on reservation highways be discussed.

The meeting was adjourned at 4:00 p.m.